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72-495

No. _____

SUPREME COURT, U.S.
FILED
SEP 22 1972
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

72-495

UNITED STATES,

v.

JOHN PERCY STIGLETS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ~~AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA BATON ROUGE DIVISION~~

WEBER & WEBER
By
Emile M. Weber
200 North Boulevard
Baton Rouge, Louisiana
Phone: 343-5738
ATTORNEY FOR PETITIONER

H. Alva Brumfield
Of Counsel

INDEX

	Page
Citations to Opinion Below	i
Jurisdiction	2
Questions Presented	2
Statutory Provision Involved	2
Statement	3
Argument	3
Conclusion	9
Certificate of Service	10
Appendix	11

TABLE OF AUTHORITIES

Baender v. Barnett, 41 S. Ct. 271 (1971)	8
Holt v. United States, 404 F. 2d 914 (1968)	7
Isbell Enterprises, Inc. v. Citizens Casualty Co. of N.Y., 431 F. 2d 409 (1970)	4
King v. United States, 364 F. 2d 235 (1966)	8
Mann v. United States, 319 F. 2d 404 (1963)	5
Michner v. United States, 157 F. 2d 616 (1947)	7
United States v. Brown, 348 F 2d 661 (1965)	8
United States v. Lester, 363 F. 2d 68 (1966)	8
United States v. Lloyd, 425 F. 2d 711 (1970)	6
United States v. King, 326 F. 2d 415 (1964)	8
United States v. Meisch, 370 F. 2d 768 (1966)	8
United States v. Rice, 428 F. 2d 923 (1970)	6
United States v. Seay, 363 F. 2d 68 (1966)	8
18 USC 472	3
18 USC 474	2

No. _____

In the Supreme Court of the United States

UNITED STATES OF AMERICA,

v.

JOHN PERCY STIGLETS,

Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA BATON ROUGE DIVISION

May it Please the Court:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, rendered on the 28th day of June, 1972, in United States of America versus John P. Stiglets, Number 72-1170 on the Docket of said court, and the refusal of petitioner's application for rehearing entered on the 25th day of July, 1972, affirming the decision of the United States District Court for the Eastern District of Louisiana, Baton

Rouge Division, Criminal Number 71-24 on the Docket of said court. The decision of the United States Court of Appeals for the Fifth Circuit is appended hereto. A stay of mandate has been granted pending decision on this application for writ of certiorari to this Honorable Court.

JURISDICTION

Jurisdiction of this court is invoked under 28 USC 1254(1) and 28USC 1651(a). Petitioner is requesting a review of a decision of the United States Court of Appeals for the Fifth Circuit.

QUESTIONS PRESENTED

I. Should an appeals court place a criminal appeal on the summary calendar when the due process question raised is improper instruction to the jury by the trial court as to the law to be used by the jury while deliberating?

II. Should an appeals court decide the issue of whether acquittal on two counts of a three count indictment involving one transaction and virtually identical facts dictate acquittal on all counts of the indictment?

III. Were the acts performed by the defendant of such a nature that they violated the intent and spirit of 18 USC 474?

STATUTORY PROVISIONS INVOLVED

This case involves the statutory provision 18 USC 474.

STATEMENT OF THE CASE

On March 9, 1971, petitioner, along with John Sims, was indicted in a three (3) count indictment.

The indictment charged in the first count that they did, with intent to defraud, make nine thousand, four hundred twenty-two (9,422) counterfeit federal reserve notes, in violation of 18 USC 471.

The second count charged that they were in possession of counterfeiting paraphernalia with intent to use this for printing counterfeit money in violation of 18 USC 474.

The third count charged them with having in their possession, with intent to defraud, the counterfeit notes described above, in violation of 18 USC 472.

On September 20, 1971, the two day trial for both defendants began. On September 21, 1971, the jury returned a verdict of "Not Guilty" on all counts as to John Sims, and "Not Guilty" on counts One (1) and Three (3) as to petitioner, John P. Stiglets.

On January 7, 1972, the court sentenced petitioner to the custody of the United States Attorney General for a period of six (6) years. It is this conviction and sentence that John P. Stiglets respectfully requests be reviewed by this Honorable Court.

ARGUMENT

I. AN APPEALS COURT SHOULD NOT PLACE A CRIMINAL APPEAL ON THE SUMMARY CALENDAR WHEN THE DUE PROCESS QUESTION RAISED IS

IMPROPER INSTRUCTION TO THE JURY BY THE TRIAL COURT AS TO THE LAW TO BE USED BY THE JURY WHILE DELIBERATING.

This case was disposed of by the United States Court of Appeals for the Fifth Circuit, on the briefs submitted without oral argument pursuant to local rule 18. The avowed purpose of this procedure is to shorten the time between conviction and final disposition in criminal cases.

Presently one-half (½) of the direct criminal appeals to the Fifth Circuit are being disposed of in this manner. *Isbell Enterprises, Inc. v. Citizens Casualty Co. of N.Y.*, 431 F. 2d 409 (1970).

Petitioner does not deny that the purpose of this rule is in the public interest, but merely points out that situations, as in this case, do arise where the rule may be used to deny a criminal defendant his right to appeal.

Herein the main point on appeal is that the trial court improperly instructed the jury on the issue of criminal intent of the petitioner to violate 18 USC 474. The transcript of the trial proceedings at Pages 290-325 shows that the jury was instructed three (3) different times on "intent" during six (6) hours of deliberation. The jury acquitted John Sims on all three counts and petitioner on counts One (1) and Three (3) of the indictment.

The question of intent is paramount in this case. Petitioner admitted he was guilty of the overt acts

with which he was charged, but gave a good and valid reason for his conduct. He related to the jury the threats he had received of bodily harm to himself and to his family. It was the threats of harm that caused him to commit these illegal acts. He did not commit them wilfully or with the intent requisite for guilt of a crime.

At Page 316 of the trial transcript, the trial court charged the jury that counts One (1) and Three (3) required intent to defraud and count Two (2) merely required intent to make counterfeit money and nothing at all was mentioned of criminal intent which is a necessary element of the crime. At the very least, the instructions were confusing and misleading. This is plain error, objected to by counsel, and requires reversal. *Mann v. U. S.*, 319 F. 2d 404 (1963). 18 USC 474(4).

Certainly the public interest in seeing a criminal defendant afforded all of his due process rights, including the right of having the trial court correctly instruct the jury as to the law, outweighs any public interest supposedly afforded by local rule eighteen (18) of the appellate court. Counsel should be allowed to orally argue the impact of this error in its relationship to the jury's confusion during deliberation.

II. AN APPEALS COURT SHOULD DECIDE THE ISSUE OF WHETHER ACQUITTAL ON TWO (2) COUNTS OF A THREE (3) COUNT INDICTMENT INVOLVING ONE TRANSACTION AND VIRTUALLY IDENTICAL FACTS DICTATE ACQUIT-

TAL ON ALL COUNTS OF THE INDICTMENT.

The question is directly related to the problem the trial court and jury had with "intent" as discussed above.

In answer to this question, the appellate court merely sidestepped the issue and stated that the "jury's verdict was logically inconsistent."

Here again the question of "intent" should have been dealt with but was not. The court relies on *United States v. Lloyd*, 425 F. 2d 711 (1970). When, based on the facts, one cannot avoid the conclusion that if petitioner was guilty on one count, he should have been guilty on all three. Since the jury found him not guilty of two (2) counts, it should have found him not guilty on all three. Based on *Lloyd* and *United States v. Rice*, 428 F. 2d 923 (1970), and other cases relating to the propriety of inconsistent verdicts, the argument of petitioner at first blush appears devoid of logic.

However, the defense of coercion asserted by petitioner at the trial immediately lends substance to the argument that in this case consistency in the verdicts is necessary to support the verdict. Couple this with the fact that the trial court incorrectly instructed the jury as to "intent" on the only count on which petitioner was convicted and it becomes crystal clear that an acquittal on all charges is mandatory.

The simple facts are that petitioner took the stand and admitted he committed the overt act charged in each count of the indictment. In defense of his conduct,

petitioner told the jury that his acts were the results of threats on his life and the lives of members of his immediate family. Obviously the jury believed petitioner in that they acquitted him on two (2) of three (3) counts of the indictment; all of which involved the same transaction and virtually identical facts.

The jury could have reached this conclusion for no reason other than the fact that the trial court instructed them that mere possession of counterfeiting plates was a crime regardless of the intent of or reason for the possession. *Michener v. United States*, 157 F. 2d 616 (1947).

III. THE ACTS PERFORMED BY THE DEFENDANT WERE NOT OF SUCH A NATURE THAT THEY VIOLATED THE INTENT AND SPIRIT OF 18 USC 474.

The purpose of this law is to prohibit the making or possession of plates or stones that could be used in the counterfeiting of the currency of the United States. The law intends to punish those who voluntarily or willingly violate its prohibitions.

Certainly the law was not enacted to punish persons such as petitioner who are coerced or forced to violate the law. For this reason, it is obvious that one must have a reckless disregard of the law or intend to violate the law to commit a crime.

In the companion law, 18 USC 472, the law is clear that proof of criminal intent is indispensable to proof of the offense of unlawful possession of the counterfeit money. This rule has been adopted in *Holt v. U. S.*, 404

F. 2d 914 (1968), *U. S. v. King*, 326 F. 2d 415 (1964), *U. S. v. Brown*, 348 F 2d 661 (1965), *U S. v. Meisch*, 370 F. 2d 768 (1966), and *U. S. Seay*, 432 F. 2d 395 (1970).

In *U. S. v. Lester*, 363 F. 2d 68 (1966) and *King v. U. S.*, 364 F. 2d 235 (1966), the hornbook rule that criminal intent is a necessary element of every crime is again restated.

In *Baender* v. *Barnett*, 41 S. Ct. 271 (1921), the defendant bought some junk and therein were counterfeiting dies. The rule of law developed in that counterfeiting case is the rule that this petitioner relies upon to show that the trial court incorrectly instructed the jury relative to the requisite intent necessary for a guilty verdict.

In *Baender*, the court said,

> "The statute is not intended to include and make criminal a possession which is not conscious and willing. While its words are general, they are to be taken in a reasonable sense, and not in one which works manifest injustice or infringes constitutional safeguards."

The only other case on point with the case at hand is *Michner v. U. S.*, 170 F. 2d 973 (1949). This case appears to be the benchmark case concerning intent of possession under 18 USC 474. Here the court, in interpreting the statute, held that mere possession of a plate similar to a plate from which genuine federal notes are printed is not a crime; the possession must be with intent to use the plate in counterfeiting.

In the case at hand, petitioner did not intentionally violate the law. He knew what he was doing was violative of the law. He explained, however, that he was forced to engage in these activities because of threats of immediate harm to himself and his family.

CONCLUSION

In conclusion, it is respectfully requested that a Writ of Certiorari be granted and after due consideration, a judgment of acquittal be entered or, in the alternative, petitioner's conviction be reversed and a new trial granted.

Respectfully submitted,

WEBER & WEBER

By: Emile M. Weber

EMILE M. WEBER
200 NORTH BOULEVARD
BATON ROUGE, LOUISIANA 70801
Phone: (504) 343-5738

CERTIFICATE

I hereby certify that copies of the above and foregoing petition has this day been served on the following by depositing same in the United States mail, postage prepaid:

Gerald J. Gallinghouse
United States Attorney
500 St. Louis Street
New Orleans, Louisiana 70130

John Lee Smith
Special Attorney
Department of Justice
500 St. Louis Street
New Orleans, Louisiana 70130

Baton Rouge, Louisiana, this 21st day of September, 1972.

Emile M. Weber

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 72-1170

Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JOHN P. STIGLETS,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

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(June 28, 1972)

Before BROWN, Chief Judge, GOLDBERG and MORGAN, Circuit Judges

PER CURIAM: John Percy Stiglets was charged in a three-count indictment with (i) counterfeiting 9,422 Federal Reserve notes with intent to defraud in

*Rule 18, 5 Cir.; see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F. 2d 409, Part I.

violation of 18 U.S.C.A. § 471, (ii) possessing offset printing plates with intent to use such plates for counterfeiting in violation of 18 U.S.C.A. § 474, and (iii) possessing the counterfeit notes with intent to defraud in violation of 18 U.S.C.A. § 472. Following trial by jury in the District Court, the defendant was acquitted on counts (i) and (iii), convicted on count (ii), and sentenced to the custody of the Attorney General for a term of six years. We affirm.

The record reveals that the defendant testified in his own behalf and admitted every element of each offense other than criminal intend. His defense was based exclusively on the contention that he had printed the bills as a result of threats directed against himself, his business and members of his family.

Primarily the appellant argues that the Trial Judge incorrectly instructed the jury on the issue of intent. All of the several variations orchestrated on this theme are without merit. The Court's charge contained an explicit instruction to the effect that intent to use the plates for counterfeiting was a necessary element of the offense, and there was likewise a concise explanation of the relevance of that issue to the defense of coercion. Unlike *Mann v. United States*, 5 Cir., 1963, 319 F. 2d 404, this is not a case in which the instructions were confusing, misleading, or incorrect as a matter of law. The assertion that the jury was told that mere possession was sufficient for a conviction is flatly refuted by the record.

Because each of the counts involved one transaction and virtually identical facts, the appellant argues

that an acquittal on two counts automatically dictated acquittal on all counts. Without deciding the point, we may assume that the jury's verdict was logically inconsistent. However, "inconsistency between verdicts on different counts of the indictment does not vitiate convictions on those counts of which defendant is found guilty. Each count is separately considered and if supported by the evidence may stand." *United States v. Lloyd*, 5 Cir., 1970 425 F. 2d 711, 713.

By *United States v. Coley*, 5 Cir., 1971, 441 F. 2d 1299, 1301 we have already rejected the appellant's theory that the failure to hold a preliminary hearing amounted to a denial of due process of law. The Government's failure to introduce the printing plates into evidence, if it was error at all, was clearly harmless error under F. R. Cr. P. 52, particularly in light of the defendant's unequivocal admission that he possessed the plates and that they were spurious. Likewise, the attack on the District Court's action with respect to the defendant's motions for discovery and inspection must fail in the absence of any showing whatever that such action constituted an abuse of discretion or resulted in prejudice to substantial rights of the accused. *United States v. Saitta*, 5 Cir., 1971, 443 F. 2d 830. As for the denial of the motion to suppress, we are persuaded that the record clearly and conclusively establishes the legality of the search and the seizure that accompanied it.

Finally, the appellant claims that his motion for a judgment of acquittal should have been granted. Inasmuch as the proof of guilt with respect to the second

count of the indictment was sufficient to support an inference of guilt beyond a reasonable doubt, that claim is without merit. *United States v. Warner*, 5 Cir., 1971, 441 F. 2d 821, 825, cert. denies, _____ U.S. _____, _____ S. Ct._____, 30 L. Ed 2d 58.

AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. S72-1170

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

JOHN P. STIGLETS,

Defendant-Appellant.

Appeal from the United States District Court
For the Eastern District of Louisiana

(July 25, 1972)

ON PETITION FOR REHEARING
Before BROWN, Chief Judge, GOLDBERG and MORGAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1971

No. 72-1170
Summary Calendar

D. C. Docket No. CR 71-24

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

JOHN P. STIGLETS,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Louisiana

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Before BROWN, Chief Judge, GOLDBERG and MORGAN, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

June 28, 1972

Issued as Mandate: Aug. 2, 1972